IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 10604 of 2007(K)

PETITIONER:

RAFEEQUE O., ARABIC TEACHER,
K.K.KIDAV MEMORIAL U.P.SCHOOL,
CHELLYA, KOYILANDY, KOZHIKODE DISTRICT.

BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS:

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1. STATE OF KERALA - REPRESENTED BY
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM

2. DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE.

3. DISTRICT EDUCATIONAL OFFICER,
VATAKARA.

4. ASSISTANT EDUCATIONAL OFFICER,
KOYILANDY.

5. THE MANAGER, K.K.KIDAV MEMORIAL U.P.
SCHOOL, CHELIYA, KOYILANDY, KOZHIKODE KISTRICT.

BY GOVERNMENT PLEADER SRI.M.R.SREELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the appointment order of the petitioner dated 11.6.1999.

Ext.P2: True copy of order No.B6/14264/99/K.Dis. dated 22.5.2000 issued by the 2nd respondent.

Ext.P3: True copy of order No.A3/207/88/2001 dated 3.4.2002 issued by the 2nd respondent.

Ext.P4: True copy of the communication No.C-5203/01 dated 24.8.06 issued by the 4th respondent to the petitioner.

Ext.P5: True copy of the relevant page of the audit report.

Ext.P6: True copy of the letter issued by the 2nd respondent to the 3rd respondent dated 12.3.2007.

Ext.P7: True copy of the Staff Fixation Order for the year 2006-07.

// True copy //

P.A. to Judge

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A.K.BASHEER, J.

W.P.(C)No.10604 OF 2007

Dated this the 12th day of June, 2007

JUDGMENT

Petitioner claims that he was appointed as an Arabic teacher in the Upper Primary Section of K.K.Kidav Memorial U.P. School on June 11, 1999. Ext.P2 order of respondent no.3 shows that petitioner's appointment from the instant date was approved. Thereafter, one Mohammed an unqualified teacher was deployed to another Government school by Ext.P3 order issued by respondent no.2. Petitioner has been admittedly continuing in the school ever since 1999.

2. However, on August 2006 an order was passed by respondent no.4 directing the Manager to withhold payment of salary to the petitioner on the ground that the petitioner's appointment was found to be irregular by the audit party. Ext.P5 is stated to be an extract of the audit report. Ext.P6 order was thereafter issued by respondent no.2 requesting for appropriate further action in the matter. Ext.P7 fixation of establishment order for the academic year 2006-07 shows that a sanctioned post of full time Arabic teacher in the Upper Primary section is available in the school. There is no dispute that petitioner is

continuing in the post ever since 1999. There is considerable force in the contention raised by the petitioner that Exts.P4 to P6 orders could not have been passed by the departmental officer merely on the basis of some objections alleged to have been raised by the audit party. In the counter affidavit, it has been submitted by respondent no.4 that the matter has been placed before the Government for ratification and for an appropriate further decision. It is the contention of the respondents that the order to withhold salary is taken only as a temporary measure in view of the objection raised by the audit party.

3. In the above facts and circumstances, I am of the view that the direction to withhold salary of the petitioner cannot be justified. It will be open to the Government to take an appropriate decision in the matter. Till such time a decision is taken, petitioner shall be allowed to continue in the school, and he shall not be denied his salary if there is no other legal impediment.

Writ petition is disposed of in the above terms.

A.K.BASHEER, JUDGE

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